

AMENDMENTS TO LB 327

(Amendments to E & R amendments, ER8029)

Introduced by Pirsch, 4.

1           1. Insert the following new section:

2           Section 1. Section 8-157.01, Reissue Revised Statutes of  
3 Nebraska, as amended by section 1, Legislative Bill 75, One Hundred  
4 First Legislature, First Session, 2009, is amended to read:

5           8-157.01 (1) Any financial institution which has a main  
6 chartered office or approved branch located in the State of  
7 Nebraska may establish and maintain any number of automatic teller  
8 machines at which all banking transactions, defined as receiving  
9 deposits of every kind and nature and crediting such to customer  
10 accounts, cashing checks and cash withdrawals, transfer of funds  
11 from checking accounts to savings accounts, transfer of funds  
12 from savings accounts to checking accounts, transfer of funds from  
13 either checking accounts and savings accounts to accounts of other  
14 customers, payment transfers from customer accounts into accounts  
15 maintained by other customers of the financial institution or  
16 the financial institution, including preauthorized draft authority,  
17 preauthorized loans, and credit transactions, receiving payments  
18 payable at the financial institution or otherwise, and account  
19 balance inquiry, may be conducted. Any other transaction incidental  
20 to the business of the financial institution or which will provide  
21 a benefit to the financial institution's customers or the general  
22 public may be conducted at an automatic teller machine upon

1 thirty days' prior written notice to the director if the director  
2 does not object to the proposed other transaction within the  
3 thirty-day notice period. Neither such automatic teller machines  
4 nor the transactions conducted thereat shall be construed as the  
5 establishment of a branch or as branch banking. Such automatic  
6 teller machines shall be made available on a nondiscriminating  
7 basis for use by customers of any financial institution which  
8 has a main chartered office or approved branch located in the  
9 State of Nebraska which becomes a user financial institution. It  
10 shall not be deemed discrimination if an automatic teller machine  
11 does not offer the same transaction services as other automatic  
12 teller machines or if there are no fees charged between affiliate  
13 financial institutions for the use of automatic teller machines.

14 (2) Any financial institution may become a user  
15 financial institution by agreeing to pay the establishing financial  
16 institution its automatic teller machine usage fee. Such agreement  
17 shall be implied by the use of such automatic teller machines.  
18 Nothing in this subsection shall prohibit a user financial  
19 institution from agreeing to responsibilities and benefits which  
20 might be contained in a standardized agreement. The establishing  
21 financial institution or its designated data processing center  
22 shall be responsible for transmitting transactions originating from  
23 its automatic teller machine to a switch, but nothing contained  
24 in this section shall be construed to require routing of all  
25 transactions to a switch. All automatic teller machines must be  
26 made available on a nondiscriminating basis, for use by customers  
27 of any financial institution which has a main chartered office or

1 approved branch located in the State of Nebraska which becomes a  
2 user financial institution, through methods, fees, and processes  
3 that the establishing financial institution has provided for  
4 switching transactions. The director, upon notice and after a  
5 hearing, may terminate or suspend the use of any automatic teller  
6 machine if he or she determines that it is not available on a  
7 nondiscriminating basis for use by customers of any financial  
8 institution which has a main chartered office or approved branch  
9 located in the State of Nebraska which becomes a user financial  
10 institution or that transactions originated by customers of user  
11 financial institutions are not being routed to a switch or other  
12 data processing centers. Nothing in this section may be construed  
13 to prohibit nonbank employees from assisting in transactions  
14 originated at the automatic teller machines, and such assistance  
15 shall not be deemed to be engaging in the business of banking. Such  
16 nonbank employees may be trained in the use of the automatic teller  
17 machines by financial institution employees.

18 (3) An establishing financial institution shall not  
19 be deemed to make an automatic teller machine available on a  
20 nondiscriminating basis if, through personnel services offered,  
21 advertising on or off the automatic teller machine's premises, or  
22 otherwise, it discriminates in the use of the automatic teller  
23 machine against any user financial institution which has a main  
24 chartered office or approved branch located in the State of  
25 Nebraska.

26 (4)(a) Any consumer initiating an electronic funds  
27 transfer at an automatic teller machine for which an automatic

1 teller machine surcharge will be imposed shall receive notice in  
2 accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B),  
3 as such section existed on January 1, 2004. Such notice shall (i)  
4 be posted in a prominent and conspicuous location on or at the  
5 automatic teller machine at which the electronic funds transfer is  
6 initiated by the consumer and (ii) appear on the screen of the  
7 automatic teller machine or appear on a paper notice issued from  
8 such machine after the transaction is initiated and before the  
9 consumer is irrevocably committed to completing the transaction.

10 (b) Subdivision (a)(ii) of this subsection shall not  
11 apply until January 1, 2005, to any automatic teller machine that  
12 lacks the technical capability to disclose the notice on the screen  
13 or to issue a paper notice after the transaction is initiated  
14 and before the consumer is irrevocably committed to completing the  
15 transaction.

16 (5) A point-of-sale terminal may be established at any  
17 point within this state. A financial institution may contract with  
18 a seller of goods and services or any other third party for  
19 the operation of point-of-sale terminals. A point-of-sale terminal  
20 shall be made available on a nondiscriminating basis for use by  
21 customers of any financial institution which has a main chartered  
22 office or approved branch located in the State of Nebraska which  
23 becomes a user financial institution. Nothing in this subsection  
24 shall prohibit payment of fees to a financial institution which  
25 issues an access device used to initiate electronic funds transfer  
26 transactions at a point-of-sale terminal.

27 (6) A seller of goods and services or any other third

1 party on whose premises one or more point-of-sale terminals are  
2 established shall not be, solely by virtue of such establishment,  
3 a financial institution and shall not be subject to the  
4 laws governing, or other requirements imposed on, financial  
5 institutions, except for the requirement that it faithfully  
6 perform its obligations in connection with any transaction  
7 originated at any point-of-sale terminal on its premises. The  
8 acquiring financial institution shall be responsible for compliance  
9 with all applicable standards, rules, and regulations governing  
10 point-of-sale transactions.

11 (7) Any financial institution, upon a request of the  
12 director, shall file with the director a current listing of all  
13 point-of-sale terminals established by the financial institution  
14 within this state. For purposes of this subsection, point-of-sale  
15 terminal shall include a group of one or more of such terminals  
16 established at a single business location. Such listing shall  
17 contain any reasonable descriptive information pertaining to the  
18 point-of-sale terminal as required by the director. Neither the  
19 establishment of such point-of-sale terminal nor any transactions  
20 conducted thereat shall be construed as the establishment of  
21 a branch or as branch banking. Following establishment of a  
22 point-of-sale terminal, the director, upon notice and after a  
23 hearing, may terminate or suspend the use of such point-of-sale  
24 terminal if he or she determines that it is not made available on  
25 a nondiscriminating basis for use by customers of any financial  
26 institution which has a main chartered office or approved branch  
27 located in the State of Nebraska which becomes a user financial

1 institution, that the necessary information is not on file with  
2 the director, or that transactions originated by customers of  
3 user financial institutions are not being routed to a switch  
4 or other data processing center. Nothing in this section shall  
5 be construed to prohibit nonbank employees from assisting in  
6 transactions originated at the point-of-sale terminals, and such  
7 assistance shall not be deemed to be engaging in the business of  
8 banking.

9 (8) Transactions at point-of-sale terminals may include:

10 (a) Check guarantees;

11 (b) Account balance inquiries;

12 (c) Transfers of funds from a customer's account for  
13 payment to a seller's account for goods and services on whose  
14 premises the point-of-sale terminal is located in payment for the  
15 goods and services;

16 (d) Cash withdrawals by a customer from the customer's  
17 account or accounts;

18 (e) Transfers between accounts of the same customers at  
19 the same financial institution; and

20 (f) Such other transactions as the director, upon  
21 application, notice, and hearing, may approve.

22 (9) (a) Automatic teller machines may be established and  
23 maintained by a financial institution which has a main chartered  
24 office or approved branch located in the State of Nebraska, by  
25 a group of two or more of such financial institutions, or by a  
26 combination of such financial institution or financial institutions  
27 and a third party.

1           (b) Point-of-sale terminals may be established and  
2 maintained by a financial institution which has a main chartered  
3 office or approved branch located in the State of Nebraska, by  
4 a group of two or more of such financial institutions, or by a  
5 combination of such financial institutions and a third party. No  
6 one, through personnel services offered, advertising on or off the  
7 point-of-sale terminal premises, or otherwise, may discriminate  
8 in the use of the point-of-sale terminal against any other user  
9 financial institution.

10           (10) All financial institutions shall be given an equal  
11 opportunity for the use of and access to a switch, and no  
12 discrimination shall exist or preferential treatment be given in  
13 either the operation of such switch or the charges for use thereof.  
14 The operation of such switch shall be with the approval of the  
15 director. Approval of such switch shall be given by the director  
16 when he or she determines that its design and operation are such  
17 as to provide access thereto and use thereof by any financial  
18 institution without discrimination as to access or cost of its use.  
19 Any switch established in Nebraska and approved by the director  
20 prior to January 1, 1993, shall be deemed to be approved for  
21 purposes of this section.

22           (11) Use of an automatic teller machine or a  
23 point-of-sale terminal through access to a switch and use of  
24 any switch shall be made available on a nondiscriminating basis  
25 to any financial institution. A financial institution shall only  
26 be permitted use of the switch if the financial institution  
27 conforms to reasonable technical operating standards which have

1    been established by the switch.

2                   (12) To assure maximum safety and security against  
3 malfunction, fraud, theft, and other accidents or abuses and  
4 to assure that all such access devices will have the capability  
5 of activating all automatic teller machines and point-of-sale  
6 terminals established in this state, no automatic teller machine  
7 or point-of-sale terminal shall accept an access device which  
8 does not conform to such specifications as are generally accepted.  
9 No automatic teller machine or point-of-sale terminal shall be  
10 established or operated which does not accept an access device  
11 which conforms with such specifications.

12                   An automatic teller machine shall bear a logo type or  
13 other identification symbol designed to advise customers that  
14 the automatic teller machine may be activated by any access  
15 device which complies with the generally accepted specifications.  
16 A point-of-sale terminal shall either bear or the premises on  
17 which the point-of-sale terminal is established shall contain  
18 a visible logo type or other identification symbol designed to  
19 advise customers that the point-of-sale terminal may be activated  
20 by any access device which complies with the generally accepted  
21 specifications. An automatic teller machine or point-of-sale  
22 terminal may also bear, at the option of the establishing or  
23 acquiring financial institution, any of the following:

24                   (a) The names of all individual financial institutions  
25 using such automatic teller machines or point-of-sale terminals  
26 in alphabetical order, except that the establishing or acquiring  
27 financial institution may be listed first, and in a uniform



1 typeface, size, and color; or

2 (b) The logo type or symbol of any association,  
3 corporation, or other entity or organization formed by one or more  
4 of the financial institutions using such automatic teller machines  
5 or point-of-sale terminals.

6 (13) If the director, upon notice and hearing, determines  
7 at any time that the design or operation of a switch or provision  
8 for use thereof does discriminate against any financial institution  
9 in providing access thereto and use thereof either through access  
10 thereto or by virtue of the cost of its use, he or she may revoke  
11 his or her approval of such switch operation and immediately order  
12 the discontinuance of the operation of such switch.

13 (14) If it is determined by the director, after notice  
14 and hearing, that discrimination against any financial institution  
15 has taken place, that one financial institution has been preferred  
16 over another, or that any financial institution or person has not  
17 complied with any of the provisions of this section, he or she  
18 shall immediately issue a cease and desist order or an order for  
19 compliance within ten days after the date of the order, and upon  
20 noncompliance with such order, the offending financial institution  
21 shall be subject to sections 8-1,134 to 8-1,139 and to having the  
22 privileges granted in this section revoked.

23 (15) For purposes of this section:

24 (a) Access means the ability to utilize an automatic  
25 teller machine or a point-of-sale terminal to conduct permitted  
26 banking transactions or purchase goods and services electronically;

27 (b) Access device means a code, a transaction card,

1 or any other means of access to a customer's account, or any  
2 combination thereof, that may be used by a customer for the purpose  
3 of initiating an electronic funds transfer at an automatic teller  
4 machine or a point-of-sale terminal;

5 (c) Account means a checking account, a savings account,  
6 a share account, or any other customer asset account held by a  
7 financial institution. Such an account may also include a line of  
8 credit which a financial institution has agreed to extend to its  
9 customer;

10 (d) Acquiring financial institution means any financial  
11 institution establishing a point-of-sale terminal;

12 (e) Affiliate financial institution means any financial  
13 institution which is a subsidiary of the same bank holding company;

14 (f) Electronic funds transfer means any transfer of  
15 funds, other than a transaction originated by check, draft, or  
16 similar paper instrument, that is initiated through a point-of-sale  
17 terminal, an automatic teller machine, or a personal terminal for  
18 the purpose of ordering, instructing, or authorizing a financial  
19 institution to debit or credit an account;

20 (g) Establishing financial institution means any  
21 financial institution establishing an automatic teller machine  
22 which has a main chartered office or approved branch located in  
23 the State of Nebraska;

24 (h) Financial institution means a state-chartered  
25 or federally chartered bank, savings bank, building and loan  
26 association, savings and loan association, or credit union, or a  
27 subsidiary of any such entity;

1           (i) Foreign financial institution means a financial  
2 institution located outside the United States;

3           (j) Personal identification number means a combination  
4 of numerals or letters selected for a customer of a financial  
5 institution, a merchant, or any other third party which is used in  
6 conjunction with an access device to initiate an electronic funds  
7 transfer transaction;

8           (k) Personal terminal means a personal computer and  
9 telephone, wherever located, operated by a customer of a financial  
10 institution for the purpose of initiating a transaction affecting  
11 an account of the customer; and

12           (l) User financial institution means any financial  
13 institution which desires to avail itself of and provide its  
14 customers with automatic teller machine or point-of-sale terminal  
15 services.

16           (16) Nothing in this section prohibits ordinary  
17 clearinghouse transactions between financial institutions.

18           (17) Nothing in this section requires any federally  
19 chartered establishing financial institution to obtain the approval  
20 of the director for the establishment of any automatic teller  
21 machine.

22           (18) Nothing in this section shall prevent any financial  
23 institution which has a main chartered office or an approved  
24 branch located in the State of Nebraska from participating  
25 in a national automatic teller machine program to allow its  
26 customers to use automatic teller machines located outside of  
27 the State of Nebraska which are established by out-of-state

1 financial institutions or foreign financial institutions or to  
2 allow customers of out-of-state financial institutions or foreign  
3 financial institutions to use its automatic teller machines  
4 located in the State of Nebraska. Such participation and any  
5 automatic teller machine usage fees charged or received pursuant  
6 to the national automatic teller machine program or usage fees  
7 charged for the use of its automatic teller machines by customers  
8 of out-of-state financial institutions or foreign financial  
9 institutions shall not be considered for purposes of determining  
10 if an automatic teller machine located in the State of Nebraska  
11 has been made available on a nondiscriminating basis for use by  
12 customers of any financial institution which has a main chartered  
13 office or approved branch located in the State of Nebraska which  
14 becomes a user financial institution.

15 (19) An agreement to operate or share an automatic teller  
16 machine may not prohibit, limit, or restrict the right of the  
17 operator or owner of the automatic teller machine to charge a  
18 customer conducting a transaction using an account from a foreign  
19 financial institution an access fee or surcharge not otherwise  
20 prohibited under state or federal law.

21 2. Renumber the remaining sections and correct internal  
22 references, the operative date section, and repealer so that the  
23 section added by this amendment becomes operative on its effective  
24 date with the emergency clause.